

# AFTER THE EVENT INSURANCE

## Everything you wanted to know about ATE, but were too afraid to ask

As Composite's John Mullin points out below, ATE had a difficult start. Not only that, but there's always been a mystique, indeed a degree of suspicion from the mainstream. Brokers' Monthly therefore asks him to take us back to square one to explain the ATE opportunities for brokers, and the relationship with the more traditional 'before the event' protection



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Underwriters, and indeed all experts, *ex post facto*, can always give the correct answer to problems - once things have worked out. 20:20 hindsight comes to mind?

If you took this view in traditional insurance, you would have difficulty persuading insurers to accept a fire risk after the fire!

Legal expenses insurance is different. The principal condition in both prepaid Before the Event legal expenses insurance (BTE) and After the Event (ATE) is the same. "Are

there reasonable prospects of success?" This permits prudent consideration of a risk *after* the actionable cause has occurred.

### So, what's the difference?

BTE covers the cost of legal proceedings that *may* happen within a defined time-scale, whereas ATE covers the cost of legal proceedings that are *definite* and where a claimable event has already occurred.

In legal expenses insurance, despite testing prospects of success, paying a claim is more probable with

ATE. Logically therefore, the premium is greater than the prepaid BTE. At inception or renewal of the BTE policy, expectation of litigation would have been fortuitous. The ability to recover the premium element of costs from an unsuccessful opponent significantly improves with ATE and remains a bone of contention with BTE providers like ourselves.

### There's no mystique about ATE

Without BTE insurance in place, an injured individual or company has to seek redress. Specialist lawyers (such as seen everyday on TV) offer arrangements to act on their behalf. Enormous expenses can be incurred in fighting viable actions - that's the purpose of ATE insurance.

Without boring you with history, ATE had a difficult start, but is nowadays on a firm footing. And, the increased influence of regulation, e.g. the Ministry of Justice in management of claims, has raised standards in the interests of consumers and practitioners.

## A 4-point plan for opportunity for insurance brokers

- Work with specialist legal expenses insurance providers who give unbiased advice on the complex market, cover and commission, while you serve your solicitor and client connections
- Create a relationship with specialist lawyers - you could need to introduce your clients tomorrow
- Get control of first response when your client has suffered a personal injury and provide support when your client hasn't taken your advice to purchase a BTE product. In both instances direct them to your selected specialist lawyers
- Always try to persuade clients to purchase BTE prepaid cover. It removes the worry of whether cover is obtainable and covers many matters ATE cannot cover for a fraction of the cost

### Types of problem ATE can cover

**Personal**

- Personal injury from RTA accidents, slipping and tripping and accidents at work
- Industrial disease
- Clinical negligence
- Consumer disputes
- Professional negligence

**Commercial**

- Contractual disputes including debt recovery
- Professional negligence

The types of problem ATE can cover are shown in the adjacent table, but there are countless other scenarios, personal and commercial, where cover can be provided. However, as a crude rule of thumb, underwriters' criteria for risk acceptance will be the ability to win - to recover costs including the whole ATE premium.

This means for example, that prosecutions (individual and corporate); fixed fee situations like employment matters (unless on appeal); taxation; VAT; and licensing are unlikely to be candidates for cover. For companies some 80% plus of problems fall into these categories, hence BTE comes into its own.

A variety of arrangements can be negotiated for premium payment. Commercial ATE litigation is usually more bespoke, but the simplest ATE cover - RTA injury - usually attracts a fixed premium at the outset.

Other cases require premiums that depend on the stage the case has reached (e.g. before proceedings have been issued; between issue up to trial; or the 'sudden-death' scenario of trial itself).

Premiums can be staged. Deposit premiums may be sought by underwriters with, say, monthly premiums accruing until the case-end with, hopefully, the defeated opponent paying them. Sometimes negotiations can provide for the whole premium to be paid at the case-end. Commercial cases often don't get

to trial and the costs of ATE cover may not be recovered as they will be part of the settlement.

Cover normally provides payment of the opponent's costs and disbursements paid by the client or client's solicitor (e.g. counsel's fees, medical reports). Premiums will be influenced by case status in the court system (multi-track, fast-track or test cases and multi-party actions).

The no-win/no-fee principle only operates in England and Wales although it's perfectly normal to underwrite UK risks outside these boundaries. There's no absolute necessity for there to be a conditional (no-win/no-fee) agreement.

#### *Ex post facto?*

Having retrospective force. The correct answer to a problem after it's happened, and the solutions have been recognised - that's where ATE comes in. But, it's more prudent for brokers' personal and commercial clients to have peace of mind through BTE cover - all the more important in the current turbulent economic climate.



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